

FOLEY & JUDELL, L.L.P.

ATTORNEYS AND COUNSELLORS AT LAW

ONE CANAL PLACE

SUITE 2600

365 CANAL STREET

NEW ORLEANS, LOUISIANA 70130-1138

(504) 568-1249 • FAX (504) 565-3900

LONNIE L. BEWLEY
MEREDITH L. HATHORN
DAVID E. HENDERSON
J. HUGH MARTIN
WAYNE J. NEVEU
ALAN L. OFFNER
JERRY R. OSBORNE
C. GRANT SCHLUETER
SUSAN WEEKS

HOLLY V. BARHAM

BATON ROUGE OFFICE
ONE AMERICAN PLACE
SUITE 1950, 301 MAIN STREET
BATON ROUGE, LOUISIANA 70801
TELEPHONE (225) 923-2476
FAX (225) 923-2477

HAROLD B. JUDELL
M. JASON AKERS
SPECIAL COUNSEL

JOHN W. COX
WILLIAM H. BECK, JR. (RETIRED)
OF COUNSEL

DUDLEY C. FOLEY, JR.
(1910-2006)

OUR FILE NO.

To: David Vandivier, Department of Treasury

From: Wayne J. Neveu

Date: April 17, 2009

Re: Return and Re-allocation of GO Zone and other Disaster Credits

Thank you and your colleagues for your time and attention on Wednesday to discuss the manner in which GO Zone and other disaster credits are allocated by states and how allocated GO Zone or other disaster credits may be returned and reallocated. I am sending you this memo to supplement the memo of Richard Goldstein on these matters.

The Louisiana Housing Finance Agency's ("LHFA") consistent practice since calendar year 2007 has been to accept the return of GO Zone Credits allocated in a prior calendar year and to re-allocate such returned GO Zone credits to other projects in the GO Zone. Richard Goldstein's memo cites language under the heading "Stacking Rule" of the Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of H.R. 4440, The "Gulf Opportunity Zone Act of 2005" as Passed by the House of Representatives and Senate (JCX-88-05) 2005* December 16, 2005 (the "Blue Book"), at page 12, in support of this practice.

Treasury may more clearly understand the reference on page 12 if Treasury were to review the Blue Book references to "Stacking Rule" on both pages 11 and 12:

Pre-GO Zone Act Stacking Rule: The Blue Book at page 11 provides the following description of the Pre-GO Zone Stacking Rule:

The present-law stacking rule provides that each State is treated as using its allocation of the unused State housing credit ceiling (if any) from the preceding calendar

before the current year's allocation of credit (including any credits returned to the State) and then finally any national pool allocations.

GO Zone Stacking Rule: The Blue Book at page 12 provides the following description of the GO Zone Stacking Rule:

Within each calendar year, each applicable State within the GO Zone must treat the additional credit cap allocable under the provision to that State as allocated before any other credit cap amounts. Therefore, under the provision each applicable State within the GO Zone is treated as using credits in the following order: (1) the additional credit cap (including any such credits returned to the State) under the Gulf Opportunity Zone, then (2) its allocation of the unused State housing credit ceiling (if any) from the preceding calendar year, then (3) the current year's allocation of present-law credit (including any credits returned to the State) and then (4) any national pool allocations. This generally maximizes the total amount of credit (under both otherwise applicable low income housing credit cap and the additional credit cap for the Gulf Opportunity Zone) which may be carried forward.

The underlined identical language in #1 and #3 above illustrates contemporaneous legislative history treating both GO Zone Credits and non-GO Zone Credits the same for purposes of return and reallocation. As a technical matter, any returned credits must be accounted for under Section 42(h)(3)(C)(iii) of the Internal Revenue Code of 1986 as amended (the "Code"). Section 42(h)(3)(C)(iii) reads as follows: *an amount of the State housing credit ceiling returned in the calendar year.*

Carryover: During the course of our conference call on Wednesday, you asked for an explanation of the following Blue Book's statement about Carryover at page 12:

The additional credit cap available for States within the Gulf Opportunity Zone for calendar years 2006, 2007 and 2008 may not be carried forward from any year to any other year.

As stated during the conference call Wednesday, the foregoing language simply reinforces the method by which the State's credit ceiling increased by the lesser of (a) the *Gulf Opportunity housing amount* in Section 1400N(c)(1)(ii) or (b) the housing credit dollar amount allocated to buildings in the GO Zone for such calendar year. The carryover portion of a State's housing credit ceiling is technically referenced in Section

42(h)(3)(C)(i) of the Code. Section 42(h)(3)(C)(i) of the Code is restated as follows: *the unused State housing credit ceiling (if any) of such State for the preceding calendar year.*

GO Zone Credits are clearly subject to “*return*” under Section 42(h)(3)(C)(iii) as explained by the language underlined in #1 of the Blue Book explanation of the Stacking Rule at page 12; however, GO Zone Credits are not subject to “*carryover*” under Section 42(h)(3)(C)(i) of the Code as referenced in the shaded language of #2 of the Blue Book at page 12.

Section 1602 Exchange of Returned GO Zone Credits: The Blue Book clearly demonstrates that GO Zone Credits allocated to buildings in the GO Zone were part of the State’s housing credit ceiling in the year of allocation. The Blue Book also clearly supports the inclusion of returned GO Zone Credits as part of the State’s housing credit ceiling in the year in which such credits were returned. Returned GO Zone Credits are part of the State’s housing credit ceiling under Section 42(h)(3)(C)(iii). Section 1602 of the Stimulus Bill specifically permits “*100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code.*” GO Zone Credits and other disaster credits allocated prior to calendar year 2009 but returned in 2009 are qualified for exchange under the unambiguous language of Section 1602 of the Stimulus Bill.